

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**FINAL ORDER IN DOCKET NO. 96-01331**

**THE AVOIDABLE COSTS OF  
PROVIDING BUNDLED SERVICE FOR RESALE  
BY  
LOCAL EXCHANGE TELEPHONE COMPANIES**

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

January 17, 1997

Nashville, Tennessee

**IN RE: THE AVOIDABLE COSTS OF PROVIDING BUNDLED SERVICE FOR  
RESALE BY LOCAL EXCHANGE TELEPHONE COMPANIES**

**FINAL ORDER IN DOCKET NO. 96-01331**

**I. INTRODUCTION:**

A properly convened hearing (the "Avoidable Costs Hearing") was held in the above-captioned matter on Monday, September 30, 1996, and continuing until Wednesday, October 2, 1996, in the hearing room of the Tennessee Regulatory Authority (the "Authority"), 460 James Robertson Parkway, Nashville, Tennessee before Chairman Lynn Greer, Director Melvin Malone, and Director Sara Kyle. The Avoidable Costs Hearing was open to the public at all times.<sup>1</sup>

The purpose of the Avoidable Costs Hearing was to hear oral testimony on the issues to be decided in Docket No. 96-01331. At the Status Conference in this matter held on Wednesday, August 28, 1996, and the Pre-Hearing Conferences held in connection with this matter on September 5, 1996 and September 11, 1996, the Directors and the parties determined and agreed that the issues to be decided in Docket No. 96-01331 were 1) what are the appropriate wholesale rates for BellSouth or Sprint-United to charge when Local Service Competitors purchase BellSouth's or Sprint-United's retail services for resale? and 2) must appropriate wholesale rates for BellSouth's and/or Sprint-United's services subject to resale equal

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<sup>1</sup> The appearances entered at the Avoidable Costs Hearing are recorded on the last page of the order.

BellSouth's or Sprint-United's retail rates, less all direct and indirect costs related to retail functions?

On Thursday, November 14, 1996, a properly convened conference was held in this matter in the hearing room of the Authority in order to allow the Directors to deliberate and reach a determination of the issues presented in Docket No. 96-01331 (the "Avoidable Costs Conference"). The Avoidable Costs Conference was open to the public at all times.<sup>2</sup>

## **II. APPLICABLE LAW AND THE PURPOSE OF THE AVOIDABLE COSTS PROCEEDING:**

### **A. LAWS OF THE STATE OF TENNESSEE-**

In 1995, the General Assembly of the State of Tennessee enacted Public Chapter 408 in order to encourage the development of "an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers." (Section 1 of Public Chapter 408 of the Acts of 1995, codified as T.C.A. § 65-4-123 entitled "Declaration of telecommunications services policy"). Under Section 8 of Public Chapter 408 of the Acts of 1995, codified as T.C.A. § 65-4-124 entitled "Administrative Rules", the Authority is required in T.C.A. § 65-4-124(b) to "promulgate rules and issue such orders as necessary to implement the requirements of [T.C.A. § 65-4-124(a)] and to provide for unbundling of service elements and functions, terms for resale, interLATA presubscription, number portability, and packaging of a basic local exchange telephone service or unbundled features or functions with services of other providers." T.C.A. § 65-4-124(a) states

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<sup>2</sup> The Avoidable Costs Hearing, the Avoidable Costs Conference, and all other open meetings held by the Authority in connection with Docket No. 96-01331 are hereinafter sometimes collectively referred to as the "Avoidable Costs Proceeding."

that "[a]ll telecommunications services providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions; and all telecommunications providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications services providers."

The Authority commenced Docket No. 96-01331<sup>3</sup> as part of its duty to facilitate the implementation of the State of Tennessee's telecommunications services policy and to promulgate rules and issue orders as necessary to implement the requirements of T.C.A. § 65-4-124(a).

#### **B. FEDERAL LAWS-**

In 1996, the Federal Telecommunications Act of 1996 (the "Act") was passed, signed into law, and became effective and the Federal Communications Commission (the "FCC") issued its First Report and Order in CC Docket No. 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Pursuant to Section 251(c)(4) of the Act, incumbent local exchange carriers are required "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers....." Issues arising out of this Section of the Act, including the two issues raised in this Docket No. 96-01331, were presented to the Directors, acting as Arbitrators pursuant to the Act, as a part of the arbitration proceedings between AT&T

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<sup>3</sup> The Tennessee Public Service Commission opened Docket No. 96-00067 at the beginning of 1996. Docket No. 96-00067 was also entitled "The Avoidable Costs of Providing Bundled Services for Resale by Local Exchange Telephone Companies" and was opened for the purpose of satisfying the requirements of T.C.A. § 65-4-124(b). Docket No. 96-00067 was not recommenced before the Authority because the parties thereto failed to stipulate that the record in Docket No. 96-00067 could be transferred to the Authority after the Tennessee Public Service Commission ceased to exist on June 30, 1996.

and BellSouth in Docket No. 96-01152 and the arbitration proceedings between MCI and BellSouth in Docket No. 96-01271. Therefore, it was agreed that the record presented in this Docket No. 96-01331 was to be made a part of the record in Docket No. 96-01152 and Docket No. 96-01271 as well and that the decisions reached in the Avoidable Costs Proceeding would be recognized and adopted as part of the decisions in the arbitrations.

### III. DISCUSSION:

In order to reach the appropriate wholesale rates for BellSouth and/or Sprint-United to charge when the Local Service Competitors (and all other local service competitors) purchase resale services from BellSouth and Sprint-United for resale, the Directors followed a three step process. First, they made a series of general decisions, second, a series of decisions to establish the accounting mechanism, and third, they calculated and approved a wholesale discount.

The general decisions were that one wholesale discount should apply to all services subject to resale, in other words, there should not be a different rate for residential, business, or other categories, that the wholesale discount was to be a set percentage off the tariffed rates, not a fixed dollar amount, and that the services subject to resale were bundled services and include operator services and directory assistance.

In order to establish the accounting mechanisms, the Directors found that the wholesale discount percentage should be based on (Tennessee) intrastate revenues and expenses<sup>4</sup>; that the expenses in Accounts 6611, 6612, 6613, and 6623 are directly avoided; that, for BellSouth, approximately eighty (80%) percent of the expenses in the accounts named directly above are avoided; that, for Sprint-United, approximately eighty-three and one half (83.5%)

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<sup>4</sup> Chairman Greer, in making his motion on this matter, stated that it was appropriate for the Authority to base its decisions in Docket No. 96-01331 on expenses and revenues incurred and generated in Tennessee because that was the State over which it had jurisdiction.

percent of the expenses in the accounts named directly above are avoided; that the expenses in Accounts 6121, 6122, 6123, 6124, 6711, 6712, 6721, 6722, 6723, 6724, 6725, 6726, 6727, and 6728 are indirectly avoided; that the percentage of indirect expenses avoided is calculated as a ratio of directly avoided expenses to total direct expenses; that, for BellSouth, approximately fifteen (15%) percent of the expenses in the accounts named in the indirect category are avoided; that, for Sprint-United, approximately twelve and sixty one-hundredths (12.60%) percent of the expenses in the accounts named in the indirect category are avoided; that "Uncollectible Revenues" recorded in Account 5301 are treated as indirect expenses and are avoided at one hundred (100%) percent; and that the wholesale discount shall be calculated as a ratio of total avoided expenses to total operating expenses.

Finally, based upon the method of calculating the wholesale discount as the ratio of total avoided expenses to total operating expenses, the Directors found that the wholesale discount for BellSouth should be sixteen (16%) percent and for Sprint-United should be twelve and seventy one-hundredths (12.70%) percent.

Based upon the entire record in Docket No. 96-01331 and the applicable federal and state laws, the Authority reached the conclusions set forth below:

**IT IS THEREFORE ORDERED:**

1. That one wholesale discount shall apply to all services subject to resale<sup>5</sup>; and

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<sup>5</sup> Several parties advocated the adoption of more than one discount rate for each incumbent local exchange company. The Authority did not adopt this position. As examples of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume IV, Tuesday, October 1, 1996, page 110, lines 6-11, testimony of Patricia A. McFarland, witness for AT&T; Transcript of Tennessee Regulatory Hearing, Volume V, Tuesday, October 1, 1996, page 235, lines 10-12, testimony of August H. Ankum, witness for MCI; and Transcript of Tennessee Regulatory Hearing, Volume VI, Wednesday, October 2, 1996, page 70, lines 11-25 and page 71, lines 1-3, testimony of Archie Hickerson, witness for the Consumer Advocate.

2. That the wholesale discount be, and hereby is, established as a set percentage off the tariffed rates<sup>6</sup>; and

3. That the decisions rendered in Docket No. 96-01331 and evidenced in this Order apply to the resale of bundled services, which include operator services and directory assistance<sup>7</sup>; and

4. That the wholesale discount percentage be, and hereby is, based on Tennessee intrastate revenues and expenses<sup>8</sup>; and

5. That the expenses in the following accounts, be, and hereby are, found to be directly avoided<sup>9</sup>:

Account 6611-Product Management,

Account 6612-Sales,

Account 6613-Product Advertising, and

Account 6623-Customer Services; and

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<sup>6</sup> Sprint-United advocated the adoption of a set dollar amount off of the retail price rather than a percentage discount. The Authority did not adopt this position. As an example of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume I, Monday, September 30, 1996, page 256, lines 3-14, testimony of Walter S. Reid, witness for BellSouth.

<sup>7</sup> As an example of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume I, Monday, September 30, 1996, page 273, line 25 and page 274, line 1, testimony of Walter S. Reid, witness for BellSouth.

<sup>8</sup> As an example of testimony supporting the position taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume V, Tuesday, October 1, 1996, pages 235-243, testimony of August H. Ankum, witness for MCI and Attachment 3, Direct Testimony of August H. Ankum Before the Tennessee Regulatory Authority on Behalf of MCI dated September 10, 1996.

<sup>9</sup> As an example of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume VI, Wednesday, October 2, 1996, page 37, lines 14-18, testimony of Archie Hickerson, witness for the Consumer Advocate.

6. That for BellSouth, approximately eighty (80%) percent of the expenses included in the accounts named in Paragraph 5 above are avoided<sup>10</sup>; and

7. That for Sprint-United, approximately eighty-three and one-half (83.5%) percent of the expenses included in the accounts named in Paragraph 5 above are avoided<sup>11</sup>; and

8. That the expenses in the following accounts, be, and hereby are, found to be indirectly avoided<sup>12</sup>:

Account 6121-Land and Buildings,

Account 6122-Furniture and Artwork,

Account 6123-Office Equipment,

Account 6124-General Purpose Computer,

Account 6711-Executive,

Account 6712-Planning,

Account 6721-Accounting and Finance,

Account 6722-External Relations,

Account 6723-Human Resources,

Account 6724-Information Management,

Account 6725-Legal,

Account 6726-Procurement,

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<sup>10</sup> The percentage determined in Paragraph 6 is based upon proprietary information submitted by the parties to the Avoidable Costs Proceeding. Such information is the subject of a Protective Order.

<sup>11</sup> The percentage determined in Paragraph 7 is based upon proprietary information submitted by the parties to the Avoidable Costs Proceeding. Such information is the subject of a Protective Order.

<sup>12</sup> As an example of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume VI, Wednesday, October 2, 1996, page 38, lines 1-6, testimony of Archie Hickerson, witness for the Consumer Advocate.



Account 6727-Research and Development,

Account 6728-Other General and Administrative; and

9. That the percentage of indirect expenses avoided is calculated as a ratio of directly avoided expenses to total direct expenses<sup>13</sup>; and
10. That for BellSouth, approximately fifteen (15%) percent of the expenses included in the accounts named in Paragraph 8 are avoided<sup>14</sup>; and
11. That for Sprint-United, approximately twelve and sixty one-hundredths (12.60%) percent of the expenses included in the accounts named in Paragraph 8 are avoided<sup>15</sup>; and
12. That "Uncollectible Revenues" recorded in Account 5301 are treated as indirect expenses and are avoided at one hundred (100%) percent<sup>16</sup>; and
13. That the wholesale discount be, and hereby is, calculated as a ratio of total avoided expenses to total operating expenses<sup>17</sup>; and

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<sup>13</sup> As examples of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume IV, Tuesday, October 1, 1996, page 116, lines 4-25 and page 117, lines 1-14, testimony of Patricia A. McFarland, witness for AT&T; Transcript of Tennessee Regulatory Hearing, Volume VI, Wednesday, October 2, 1996, page 41, lines 16-25 and page 42, lines 1-21, testimony of Archie Hickerson, witness for the Consumer Advocate; and Transcript of Tennessee Regulatory Hearing, Volume VI, Wednesday, October 2, 1996, page 54, lines 5-8, testimony of Archie Hickerson, witness for the Consumer Advocate.

<sup>14</sup> The percentage determined in Paragraph 10 is based upon proprietary information submitted by the parties to the Avoidable Costs Proceeding. Such information is the subject of a Protective Order.

<sup>15</sup> The percentage determined in Paragraph 11 is based upon proprietary information submitted by the parties to the Avoidable Costs Proceeding. Such information is the subject of a Protective Order.

<sup>16</sup> As examples of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume IV, Tuesday, October 1, 1996, page 138, lines 2-8, testimony of Art Lerma, witness for AT&T; Transcript of Tennessee Regulatory Hearing, Volume V, Tuesday, October 1, 1996, page 240, lines 13-20, testimony of August H. Ankum, witness for MCI.


<sup>17</sup> As an example of testimony supporting the approach taken by the Authority, see Transcript of Tennessee Regulatory Hearing, Volume V, Tuesday, October 1, 1996, page 245, lines 4-10, testimony of August H. Ankum, witness for MCI.

14. That the wholesale discount for BellSouth be, and hereby is, sixteen (16%) percent; and

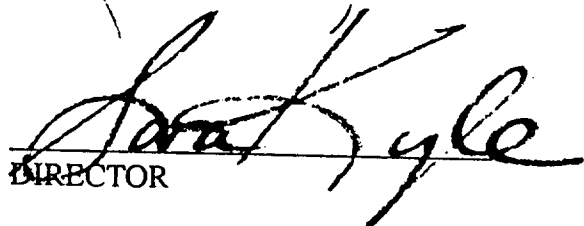
15. That the wholesale discount for Sprint-United be, and hereby is, twelve and seventy one-hundredths (12.70%) percent; and

16. That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and

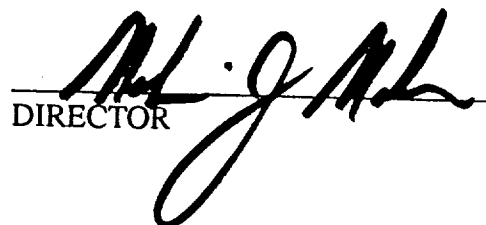
17. That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
CHAIRMAN

ATTEST:

  
DIRECTOR

  
EXECUTIVE SECRETARY

  
DIRECTOR

## **APPEARANCES:**

Guy M. Hicks, Esquire, General Counsel-Tennessee, 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-3300 and Fred McCallum, Esquire, and Thomas B. Alexander, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375-0001, appearing on behalf of BellSouth Telecommunications, Inc. ("BellSouth").

Carolyn Tatum Roddy, Esquire, Attorney, State Regulatory, 3100 Cumberland Circle, Atlanta, Georgia 30339, appearing on behalf of Sprint Communications Company, L.P. ("Sprint").

James Wright, Esquire, Senior Attorney, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900, appearing on behalf of United Telephone-Southeast ("United").

**Herein Sprint and United have been jointly referred to as "Sprint-United".**

James Falvey, Esquire, 131 National Business Parkway, #100, Annapolis Junction, Maryland 20701, appearing on behalf of American Communications Services, Inc. ("ACSI").

G. Thomas McPherson, Esquire, Benham-Leake, 6000 Poplar Avenue, Suite 401, Memphis, Tennessee 38119, appearing on behalf of ATS of Tennessee, LLC ("ATS").

Val Sanford, Esquire, and John Knox Walkup, Esquire, Gullett, Sanford, Robinson & Martin, 230 Fourth Avenue, N., 3rd Floor, P.O. Box 198888, Nashville, Tennessee 37219-8888 and James Lamoureux, Esquire and Thomas Lemmer, Esquire, 1200 Peachtree Street, Atlanta, Georgia 30309, appearing on behalf of AT&T Communications of the South Central States, Inc. ("AT&T").

Vincent Williams, Esquire, Second Floor, Cordell Hull Building, 426 Fifth Avenue North, Nashville, Tennessee 37243-0500, formerly located at 1504 Parkway Tower, 404 James Robertson Parkway, Nashville, Tennessee 37243-0500, appearing on behalf of the Consumer Advocate Division of the Office of the Attorney General (the "Consumer Advocate").

Jon E. Hastings, Esquire, Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Nashville, Tennessee 37219 and Michael Henry, Esquire, Senior Counsel, 780 Johnson Ferry Road, Atlanta, Georgia 30875, appearing on behalf of MCI Telecommunications Corporation ("MCI").

Dana Shaffer, Esquire, 105 Malloy Street, #300, Nashville, Tennessee 37201, appearing on behalf of NEXTLINK of Tennessee, LLC ("Nextlink").

T. G. Pappas, Esquire, Bass, Berry & Sims, 2084 First American Center, Nashville, Tennessee 37238, appearing on behalf of the Coalition of Small Local Exchange Companies.

Charles Welch, Jr., Esquire, Farris, Mathews, Gilman, Brannan & Hellen, 511 Union Street, Suite 2400, Nashville, Tennessee 37219, appearing on behalf of Time-Warner AXS of Tennessee, L.P. ("Time-Warner").

**Herein ACSI, ATS, AT&T, MCI, Time-Warner, Nextlink, and the Coalition of Small Local Exchange Companies have been referred to collectively as "Local Service Competitors."**